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Current Topics.

Retired Judges and Further Service.

OCCASIONALLY, as we know, those who have retired from the Bench have responded to the call for further service, not only in presiding over public inquiries, but also in renewing their judicial work for which they were made eligible by certain comparatively recent statutes. Among those of the past who returned to the courts after having resigned was LORD DARLING, who on two occasions came back to the courts to assist in clearing off arrears and seemed to enjoy having again to appear in his judicial robes. A more recent instance, however, of a retired judge returning to active service was seen recently in the House of Lords, which has been engaged in considering the question of damages awarded in respect of the death of a very young child by accident. So important did the House regard the question that instead of being constituted of five law lords as is the normal number sitting, it was decided that the appeal should be heard by seven, and one of the seven, it was interesting to note, was LORD ROCHE, who was a Lord of Appeal from 1935 to 1938, but who now came back to assist in the solution of the point in dispute. In his case no statutory authority was needed to entitle him to sit after having resigned, for, as a peer who has held high judicial office, he is entitled to sit if he thinks fit so to do. His resumption of work is, however, another instance of the readiness of our public men to share in work for which they have special qualifications.

The Ministry of Works and Buildings.

IN the course of a recent "Current Topic" on the subject of air-raid damage and town planning, we alluded to the importance of the newly-established Ministry of Works and Buildings. The functions of this department were recently outlined by Mr. ATTLEE, in a statement to the House of Commons, and the following brief particulars are derived from this statement. The Ministry, he said, would be responsible for the erection of all new civil works and buildings required by any Government Department. It would take over the whole organisation of the Office of Works, including their present responsibilities for the erection of buildings for other civil departments and for service departments, and the work of the Ministry of Supply, including the new buildings section of the ordnance factories, and the approval of plans of new private factories or extensions of existing private factories, to the cost of which the Ministry of Supply was contributing. Certain highly specialised work would remain in the service departments, as would also the responsibility for maintenance and repair of buildings and equipment in use by those departments or the Ministry of Supply except in so far as a transfer to the new Ministry might be mutually agreed to be convenient. The Ministry of Works and Buildings would be responsible for the licensing of private building and for determining the priority of proposals for

rebuilding buildings damaged by air raids. It might also arrange, by agreement with the service departments or the Ministry of Aircraft Production, to erect on their behalf buildings not of a highly specialised character, and for the supervision of contracts for the erection of new private factories or the extension of existing private contracts required for war production. The Production Council would lay down the general order of priority of building work. The Minister would be a member of the Council, would be responsible for the Works and Buildings Priority Committee, and would determine the application of the Council's directions to the priority of particular buildings, subject to appeal, if necessary, to the Council. He would be empowered to call on all departments retaining responsibility for the erection and maintenance of buildings and works of construction—including departments concerned with work carried out by or on behalf of local authorities or public utility undertakings—to furnish from time to time such information as he might require as to the present and prospective demands of themselves and their contractors for labour and materials, and any points ancillary thereto. He would also be responsible for such control or central purchase of building materials not at present controlled as might be necessary, and would take steps to institute research into such questions as the adoption of substitutes for building materials which were in short supply or the modification of designs and specifications with a view to expedition, and to ensure that the results of past and future research were promptly communicated to all concerned.

The War and Contracts.

THE attention of readers may be drawn to a statement recently made by the Attorney-General in the House of Commons in response to a question concerning what action had been taken as a result of the recommendations of the Law Revision Committee, contained on Command Paper 6009, with regard to the revision of the law relating to frustration of contracts. Those recommendations, he said, had not yet been given effect to by legislation. It would be appreciated that the recommendations dealt with the legal consequences which followed when a contract had been frustrated, not with the conditions which involved frustration. The Government were considering whether the court should have power to modify or terminate certain contracts where special hardship, attributable to war conditions, would ensue from completion in accordance with their strict terms. Such war conditions would not, in most cases, amount to frustration. The real question, therefore, was whether relief ought now to be given on a wider basis than that of the committee's recommendations. Any legislation for the purpose of giving such relief might include provisions on the lines of those recommendations which, as already pointed out, were directed solely to altering the rules which at present governed the position after a contract had been frustrated.

War Damage: Rent and Mortgage Interest Payments.

THE Attorney-General was recently asked in the House of Commons whether he was aware that many people had been asked for rent when they had been ordered out of their houses on account of time bombs or had left because their homes were uninhabitable, and what action he was taking to deal with the problem. In answer, Sir DONALD SOMERVELL, K.C., referred to the provisions of the Landlord and Tenant (War Damage) Act, 1939, enabling a tenant whose house had been rendered unfit by war damage to serve a notice on his landlord disclaiming the lease. Those provisions, he said, did not apply to the case where a time bomb compelled the tenant to evacuate his premises temporarily. On the other hand, tenants under short weekly or monthly tenancies could always put an end to them by giving the usual notice. He added that the question whether further legislation was needed would be considered by the Government. In response to a further question relating to mortgagors, the Attorney-General said that, although his information was that there was a general disposition on the part of the majority of building societies to give sympathetic treatment to cases where houses had become uninhabitable and/or when the mortgagors had been evacuated to safer areas, the question of further legislation on the subject was under consideration by the Government. A third question, addressed to the Minister of Health, raised the desirability of the introduction of a measure to protect weekly tenants whose landlords demanded rent after a tenement had been rendered uninhabitable by enemy action, and of rendering such a measure retrospective. The Attorney-General reiterated his statements concerning the Landlord and Tenant (War Damage) Act, and the possibility of avoiding liability for rent by giving notice to determine the tenancy, but he said that the Government would be ready to consider representations if it was felt that the present position was unsatisfactory.

War Risks Insurance: Food in Bombed Buildings.

It was recently announced that arrangements have been made by the Ministry of Food to prevent food remaining blocked in warehouses and shops damaged by bombs. Owners of foodstuffs stored in buildings damaged by enemy action need not wait for their insurance claims to be assessed by the Board of Trade before starting salvage work, and all possible steps are being taken to rescue such foodstuffs and put them into use for human consumption or otherwise. Divisional food officers and food executive officers have been empowered to co-operate for this purpose with owners and Board of Trade assessors appointed under the commodity insurance scheme. In some instances they may be assisted by emergency committees appointed by the area provisions and groceries committees. The Board of Trade has agreed that insurance under the War Risks (Commodity) Insurance Scheme shall not be prejudiced in any way by *bona fide* action taken in pursuance of the foregoing arrangements. The Ministry of Food has stated that it cannot be emphasised too strongly that in cases of urgency all possible steps to prevent waste of food should be taken without awaiting the completion of the usual formalities. When damage to insured goods occurs through King's enemy risks it is the duty of a policy-holder to take steps at once to prevent further damage or loss. He need not wait for an assessor to attend, but should prepare a schedule of the goods salvaged.

Requisitioning Furniture.

IN our issue of 2nd November we made reference to a circular sent by the Ministry of Health to the London County Council and the Metropolitan Borough Councils whereby the Minister of Health intimated that in exercise of powers conferred on him by reg. 53 (5) of the Defence (General) Regulations, 1939, the powers delegated to the councils were to include the requisitioning of any article of furniture or household equipment in any unoccupied premises or stored in any furniture depository for the purpose of furnishing accommodation provided for persons rendered homeless as the direct or indirect consequence of enemy action. Mr. H. U. WILLINK, M.P., Special Commissioner for the Care and Rehousing of Homeless Persons in the London area, recently stated in *The Times* that town clerks in the County of London had been authorised to requisition at its assessed value any article of furniture or household equipment in unoccupied premises or stored in any furniture depository in order to furnish premises taken over for re-housing people bombed out of their own homes. Commenting on this statement in a letter to *The Times*, Sir ROBERT GOWER writes: "Surely this policy is entirely unnecessary and presents untold sources of annoyance and vexation." It is urged that, if the authorities are able to walk into any house and take what they like at their own price, valued heirlooms may well be

lost to the owners for ever; and the writer asks what is to happen to the unfortunate owners (serving soldiers and sailors among them) when they wish after the war to re-establish their homes "if goods in repositories are to be drawn on at will by anybody." He contends that if the authorities want furniture they should buy it normally. Second-hand shops, he says, have plenty of it, and the requisitioning powers of the Government can surely extend to them as well as to the unfortunate people who have been driven out of town by constant enemy air raids or by actual death or suffering among the members of their families.

The Treachery Act, 1940.

A RECENT question in the House of Commons alluded to what was described as a widespread impression that the provisions of the Treachery Act, 1940, were not fully being implemented. It was urged that persons were being prosecuted under the Defence Regulations in cases where convictions could be obtained under the Treachery Act, and the Attorney-General was asked whether he would publish as much information concerning the operation of the Act as was consistent with the national interest. Sir DONALD SOMERVELL, K.C., intimated that he was not aware of the impression referred to, and recalled his answers to previous questions to the effect that he did not believe there was any foundation for such a view. Each case had to be considered in the light of the evidence and the circumstances, and an offence under s. 1 of the Treachery Act was confined within strict and narrow limits.

Defence (Finance) Regulations, 1939: Treasury Circular.

A CIRCULAR has recently been sent from the Treasury to all local authorities, joint boards, joint committees, joint electricity authorities, port health authorities, catchment boards and drainage boards with reference to the provisions of reg. 6 of the Defence (Finance) Regulations, 1939. The communication conveys the consent of the Treasury to the renewal by the authorities concerned of mortgages and other obligations (except stock, bonds—other than local or corporation bonds—bills and promissory notes) maturing for payment within the period beginning on 1st January and ending on 30th June, 1941. This consent extends to the replacement of such mortgages or obligations in any manner otherwise than by the issue of stock, bonds (other than local or corporation bonds), bills and promissory notes. It is stated that the commissioners will be prepared in due course to consider whether this consent can be extended for a further period, but in the meantime an authority desiring to deal with renewals or replacements after the date last mentioned should make application direct to the Capital Issues Committee for Treasury consent. With regard to temporary borrowing, the circular indicates that, where consent has been given to an issue of capital by a specific method for a specific purpose, that consent may be taken to cover any preliminary temporary borrowing (otherwise than by way of bills or promissory notes) for that purpose, provided that such temporary borrowing is effected within twelve months of the date of the consent. It is emphasised that the restriction of capital expenditure to purposes of present urgency is more than ever necessary; and the Treasury Commissioners look to authorities to submit all projects to the strictest review and only to approach the appropriate department for sanction after having satisfied themselves that the work is absolutely unavoidable because it is required for some war purpose or to meet some essential and present public need.

Recent Decisions.

IN *Cole v. United Dairies (London), Ltd.* (*The Times*, 6th November), the Court of Appeal (Sir WILFRID GREENE, M.R., and CLAUSON and DU PARCQ, L.J.J.) reversed the decision of a county court and held that a milk roundsman who had been injured and disfigured in the course of his employment was entitled to a declaration of liability against the defendants in respect of his disfigurement. The deputy county court judge was not entitled to reject the expert evidence of one of the respondents' managers to the effect that the appellant could not be employed as a roundsman because customers would not like the disfigurement and substitute a conclusion based on his own observation.

IN *Rees v. Cooper* (*The Times*, 12th November) the Central Criminal Court (LORD CALDECOTE, C.J., and HUMPHREYS and ATKINSON, J.J.) dismissed the appeal of one who was convicted before SINGLETON, J., at Cambridge Assizes of murder. The court negatived the contention that the learned judge had not sufficiently directed the jury as to the nature of manslaughter or as to the facts on which it was open to them to bring in a verdict of manslaughter.

Ordinary Course of Post in War Time.

CERTAIN enactments, such as s. 53 of the Agricultural Holdings Act, 1923, authorise service by post; and the post is not what it was. The wording of the section mentioned is: "Any notice, request, demand or other instrument under this Act may be served on the person to whom it is to be given either personally or by leaving it for him at his last known place of abode in England, or by sending it through the post in a registered letter addressed to him there . . ." It was held in *Van Grullen v. Trevenen* [1902] 2 K.B. 82 (C.A.), that service was good when a registered letter containing a notice to quit was tendered to the addressee, though he refused to accept it; but the substantial question argued was whether the section applied to such notices, and in order to appreciate its significance in the matter of service by post it is necessary to remember that it was decided under s. 28 of the Act of 1883 which contains the further words: "and if so sent by post it shall be deemed to have been served at the time when the letter containing it would be delivered in ordinary course; and in order to prove service by letter it shall be sufficient to prove that the letter was properly addressed and posted, and that it contained the notice, request, demand or other instrument to be served." These words did not occur in the 1906 Act, nor do they in the present statute; but the reason for this is to be found in the Interpretation Act, 1889, s. 26: "Where an Act passed after the commencement of this Act authorises or requires any document to be served by post . . . the service shall be deemed to be effected by properly addressing, prepaying and posting a letter containing the document, and unless the contrary is proved, to have been effected at the time at which the letter would be delivered in the ordinary course of post."

Now it is important to note, for the purposes of this article, that while *Van Grullen v. Trevenen* is still good law, the section which now governs the question of valid service falls into two parts. It distinguishes between effecting service through the agency of the post office and effecting service in time, and it must be taken that the proposition that service out of time was not service at all would have been dismissed by those who framed it as a mere quibble.

The importance of this distinction will be appreciated when one considers that the disturbance of postal communication ascribable to the present phase of the war takes various forms. After being posted, a letter may be destroyed; or it may merely take longer to reach its destination than it would have taken; or it may be that delivery cannot be effected because the place of abode is no longer such, or cannot [unexploded bomb] be approached.

Bearing this in mind, let us examine the existing leading authorities on the meaning of "the ordinary course of post." A number of these arose out of notices of objection to local government registers of electors under the Parliamentary Registration Act, 1843, which, under s. 100 of that statute, were to be "sent by the post." The procedure was somewhat elaborate, involving the stamping of a duplicate at the post office—the subsequent production of which was "evidence of the notice having been given to the person mentioned in such duplicate on the day on which such notice would in the ordinary course of post have been delivered to such place." "Such place" was the voter's place of abode. The next section provided that it should be sufficient if the notice were sent by the post in the manner and subject to the regulations before provided.

Dealing first with delay, there are a number of authorities all to the same effect: *Bishop v. Helps* (1845), 2 C.B. 45, which was followed in the others, is most fully reported. A notice of objection was posted at Manchester on 24th August, 1845, addressed to Corse (Gloucestershire). Normally it would have been delivered on the 25th, which was the "last day"; but owing to an accumulation at the Manchester Post Office what Manchester received on the 24th did not reach the south on the 25th, but was delivered on the 27th. Tindal, C.J., observed in his judgment that probably this was a case in which it had been considered that the advantages would outweigh the few inconveniences, and held that, the objector having done all the Act required him to do, the objection was valid: disproof of the fact of delivery in time was not material to the objector's right.

In the course of the argument in the above case, Maule, J., made two observations which may be usefully mentioned here. One was that the enactment would cover a case of change of abode; thus, more than personal service was dispensed with; the other that there was no provision for cases in which notices never reached the addressees at all. But an enactment may cover the latter contingency: the Valuation (Metropolis) Act, 1869, s. 65—"notices . . . shall be deemed to have been

served and received respectively at the time," etc.—was held to effect a presumption of law in *R. v. Westminster Unions Assessment Committee, ex parte Woodward & Sons* [1917] 1 K.B. 832 (notice of increased assessment).

In other cases the question was raised whether there must always be an "ordinary course of post." In *Lewis v. Evans* (1874), 44 L.J.C.P. 41, it appeared that a notice addressed to an inhabitant of a small Welsh village arrived at the nearest town on the 19th August, the 20th being the last day. Under the arrangements then obtaining, there was no official mode of delivery to the village, but if some private individual had been going that way a letter might have been entrusted to him. It was held that the provisions of s. 100 had not been satisfied: the production of the statutory duplicate did not evidence the giving of the notice at the place mentioned on the day on which such notice would in the ordinary course of post have been delivered to such place, for there was no ordinary course of post in which it could be so delivered.

But the question may be less simple, as was shown by two cases arising out of special conditions in military barracks. In *Childs v. Cox* (1887), 20 Q.B.D. 290; 4 T.L.R. 114 (disapproved in the second case), notices addressed to N.C.O.'s and "other ranks" reached Woolwich post office in time for distribution by the last delivery on the evening of the 20th August the "last day"; but in accordance with military regulations and post office directions, they were not taken round but were collected by orderlies from the barracks, who did not distribute the men's mail till next morning. It was held that (orderlies not being objectors' agents) there was no delivery on 20th August; and that the arrangement showed that there was no delivery in the ordinary course of post, for which it was in fact a substitute. In the other case, *Kemp v. Wanklin* [1894] 1 Q.B. 265, the men had left barracks for camp, and while the notices were collected in time to forward them so as to arrive at the camp on the "last day," the orderly corporal, mistaking them for circulars, kept them back till instructed, too late, to forward them. The court held that it must follow *Childs v. Cox*, but described that decision as bad law and gave leave to appeal. No appeal was entered, and there the matter rests. (Service of notices of objection are now governed by the Representation of the People Act, 1918, Sched. I, r. 12.)

So, apart from the Interpretation Act, 1889, s. 26, the following propositions appear to be acceptable: when a statute makes evidence of posting conclusive evidence of delivery in the ordinary course of post, evidence cannot be admitted to prove later delivery, but it may be shown that delivery was never effected or that there was no ordinary course of post.

When the statute is one passed since the Interpretation Act, 1889, one must consider whether its requirements correspond to, complement, or modify those of s. 26 of that Act. In the case of the Agricultural Holdings Act, 1923, s. 50, the section is mainly complementary: but it should be noted that registration is prescribed (as to which see *Department of Agriculture for Scotland v. Goodfellow* [1931] S.C. 556). But L.P.A., 1925, s. 196 (4), is more elaborate: "Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to . . . at the aforesaid place of abode or business . . . and if that letter is not returned through the post office undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered."

The effect, in the case of these two statutes, on the various circumstances visualised would, it is submitted, be as follows: (a) Letter containing instrument destroyed: under both A.H.A. and L.P.A. service none the less effective. (b) Letter delayed: under A.H.A. recipient, invoking condition resolute of the Interpretation Act, may prove time of delivery and notice bad; but under L.P.A. notice good unless it be possible to show that the cause of disturbance had led to a suitable modification of post office arrangements, so that there was no or a modified ordinary course. (c) Address no longer a place of abode, etc.: under A.H.A. notice good (assuming address to be the last-known place of abode at the time of posting); under L.P.A., addressee could prove return through post office.

H.M. LAND REGISTRY.

The evacuation from London of the Land Registry and of the registers, which are by law required to be kept at the Land Registry, will be complete on the 18th November. On and after that date, communications for the Land Registry should be addressed to the Chief Land Registrar, The Superintendent, Land Charges Department, or The Superintendent, Agricultural Credits Department, as the case may be, at H.M. Land Registry, Marsham Court, Bournemouth.

A Conveyancer's Diary.

War Damage to Realty.

It is now some ten weeks since war damage to property in this country began to occur on an appreciable scale and some discussion of it in this place seems to be called for. I leave aside the case of damage to chattels as being more or less straightforward, from the point of view of claiming the compensation. I also do not discuss the aspect of the matter which concerns the relation of landlord and tenant, which naturally falls to be dealt with in another part of this journal. There remains the ordinary case of damage to realty. Now, much realty can suffer only a quite limited quantum of damage: a crater in a field can fairly soon be put right. But by far the largest part of the immovable wealth of this country is comprised in buildings of one sort or another, the houses, factories, offices and shops in our towns and villages. It is buildings and their ancillary works which are the primary cases for consideration. I understand that in some few cases the local authorities are making attempts to put right the less seriously damaged buildings, and are proposing to charge the cost, after the war, to the owners. In such cases there is no problem, as presumably, by the time the bill is sent in, someone will have got the compensation, and will be more or less nearly in a position to pay it. But so far as my observation goes, most damaged property is just being left to rot. One case will spring to the mind of every practitioner who frequents the main home of conveyancing. Another case has been brought to my attention where what was needed was a new temporary roof to make inhabitable the surviving lower floors of a high house in a London street, and here, I was told, nothing was being done by the local authority, the occupying lessee had disclaimed, and the freeholder and head lessee could not arrange with one another which of them was to do it. In passing, I may remark that I have heard on very reliable authority that the local bodies in some cases, so far from doing anything to help, are actually serving dangerous structure notices on the wretched victims; if this practice is really growing up, the sooner aggrieved parties complain vigorously to their M.P.'s the better.

However, there are a vast body of cases without these complications. In them, the property belongs to a freeholder, A, and is damaged to a greater or less degree. In many cases there is also a mortgagee, B, whose charge continues to attach to what is left, and who still has his personal remedy (subject to the Courts (Emergency Powers) Acts). What is to be done? I think it is clear that the interests of both A and B will best be served by co-operation both in making claims and in restoration. If the damage can be repaired more or less at once, it will be best for both of them that it should be so. One may be in a better financial position than the other. If so, it will be wise for him to bear most of the cost and for the two of them to enter into a covenant to split the compensation when it is paid in proportion to their expenditure. Little is at present clear on this question of compensation, but it does seem likely that whatever else is done there will be a single global figure for damage to a given hereditament which will fall to be divided according to the interests of all parties concerned. I think that something will have to be done on the same lines as is done where a single sum is awarded as damages for diminution of light and has to be divided between a freeholder and a lessee.

Of all those matters one is put hopelessly in the dark by the complete absence of any statutory provision on the subject of compensation. The only concrete guidance available is Form V.O.W.1, on which victims are invited to state their claims (without prejudice to whether they will get anything). This form begins by saying that it must be filled up "within thirty days after the loss or damage has occurred"; the italics are in the original: the requirement is usually impossible, and in any case seems not to be justified by statute or by necessity. The form goes on to give the address of the local district valuer, to whom it is to be sent, "and who will acknowledge receipt of the claim." From personal experience I know that this last remark is untrue. I applied recently to know the fate of my own form sent in a month earlier, and was twice blandly put off by minor officials who explained that their office was in chaos but that they would hope sometime to acknowledge my form. It then states that claims will be "received" in respect of loss of, or damage to, property caused by enemy action, or in repelling action or imagined action by the enemy or by measures taken to avoid the spreading of the consequences of such damage. That is to say, the damage envisaged is that caused directly by explosive bombs, that caused by fires started by incendiary bombs, that caused by our own anti-aircraft shells, by the water of firemen's hoses, by demolitions following upon damage by bombs (a task which on one occasion well known to many of us caused far

more damage than the original bombs), or by aircraft of either side coming to earth in the course of battles. It also appears in a later part of the form that enemy naval bombardment and the explosion of marine mines are thought of. Presumably in some parts of the country one must add the consequences of bombardment from the French coast.

All those things cause direct and obvious damage. They also may cause damage which will be far from obvious, e.g., where a bomb landing on A's field shakes and cracks B's underground drain which passes nearby; and in built-up areas the force of one explosion may interfere with the foundations of houses a long way off or the stability of their ceilings and walls so that sooner or later they need attention. The thirty-day limit is foolish enough in the case of direct damage, but in that of indirect damage, which may only become ascertainable some time afterwards, it is ludicrous. I trust, therefore, that persons who discover this kind of damage should not allow themselves to be put off by the opening words of Form V.O.W.1, and will lodge and press their claims, however late. The form does not cover any sort of consequential damage, e.g., loss of profits.

The applicant is also asked to state his interest in the property, and it is contemplated that he may be a freeholder, a lessee or a mortgagee. If he is a tenant for life he is a freeholder, and so would be also trustees of all sorts. Most vexing practical problems will arise, in the case of settled or trust land, as to how the compensation is to be treated between capital and income, besides the question mentioned above regarding mortgages. The whole of p. 2 of Form V.O.W.1 seems to contemplate separate claims by every single person interested. If this plan is really being followed it may in some sense account for part of the confusion that exists. I cannot too strongly say that, unless the damaged realty is unmortgaged and is owned and occupied by a beneficial estate owner in fee simple, the first person who knows that the damage has occurred should tell everyone else who is interested in the land. They should then all arrange to present a united front towards the authorities, and should employ only one set of solicitors and land agents to present it. If and when anything is paid they can fight out among one another what is to be done with the money, having regard, of course, to any arrangement that may have been made in the meantime for reimbursing any of their number who has spent his own money on restoration. The damage is suffered by the whole absolute fee simple and the only practical way of getting it assessed is to assemble with that purpose the various interests which, added together, constitute the whole absolute fee simple.

Landlord and Tenant Notebook.

Positive Duties imposed by Covenant for Quiet Enjoyment.

In last week's "Notebook" I put forward the suggestion that developments in the law relating to covenants for quiet enjoyment might some day upset existing views on the duty of a landlord who lets part of his land to support the part demised. I pointed out that since the decision in *Colebeck v. Girdlers Co.* (1876), 1 Q.B.D. 234, when it was held that there was no obligation actually to keep the retained premises in repair, the covenant for quiet enjoyment (not relied on in that case) had been held to be capable of imposing positive duties. But, when it comes to examining the scope of such duties, authority is indeed scant; and before suing his landlord for not having done something he might have done, a tenant and his advisers should examine with great care the relevant portions of the judgment and *dicta* which concern the matter.

Before the decisions referred to last week (to which I will presently revert) there was little to suggest that the covenant could ever oblige a lessor to take any active steps. Cases in which the breach has been committed when a third party with a better title evicts the tenant can hardly be called instances of a failure to perform a duty; thus, in *Calvert v. Sebright* (1852), 15 Beav. 156, when on the death of the lessor a prior appointee evicted the tenant, the estate was held liable for breach of the covenant which was said to have this effect: that he "neither had done nor would do anything to prejudice the title of the lessee to the term." The authority of *Pomfret v. Ricroft* (1669), 1 Saund. 221, when it was held that a lessor who granted the use and occupation of a pump on land he retained to his tenants of neighbouring properties, was bound to maintain it, is of doubtful validity, and the action was not expressed to be for breach of covenant of quiet enjoyment. In *Shaw v. Stenton* (1858), 2 H. & N. 859, when the lessee sued for breach of covenant for quiet enjoyment to

obtain redress for surface excavations, Pollock, C.B., said: "If a lessee demise the stratum below, and covenants that he will do nothing to prevent its quiet enjoyment, he is bound so to use the surface as not to disturb the lessee in his occupation." "Do nothing," of course, *prima facie* limits the obligation to abstention; but whether "so to use" can cover both positive and negative duties is at least arguable. The words are reminiscent of "*sic utero tuo*," and I daresay that Justinian would have been surprised to hear that this could not involve a duty, say, to repair property which was likely to become dangerous to other parties by reason of its disrepair.

However, the first clear indication of acceptance of the principle was a *dictum* of Cotton, L.J., in *Anderson v. Oppenheimer* (1880), 5 Q.B.D. 602 (C.A.). The plaintiffs in that case were tenants of a ground floor and basement. A latent defect in a service pipe retained by the defendant, his landlord, caused the pipe to burst, flooding the goods in the basement. The jury found that the pipe was reasonably fit and proper for its purpose and that the defendant had not been guilty of any want of care and skill in keeping and maintaining it where it was and as it was. At first instance Field, J., when giving judgment for the defendants, deliberately refrained from saying whether a failure to keep pipes in repair which was ascribable to carelessness would constitute a breach of covenant for quiet enjoyment. Affirming the judgment, Cotton, L.J., said: "I agree that an act of omission may be tantamount to an act of commission so as to be a breach of the covenant; but in the present case there was no act of either commission or omission; and the jury have found that there was no negligence on the part of anyone in the fixing and maintaining the pipe." This recognises the principle, but is otherwise not very satisfactory. The unfortunate thing is that we are left wondering what "omission" could constitute a breach. If it is an omission to do what a reasonable man would do, and negligence were thus the condition precedent to liability, tenants might well say "Thank you for nothing"; at most it would mean an action for breach of contract as an alternative to one of tort.

Next came *Cohen v. Tannar* [1900] 2 Q.B. 6069 (C.A.). In this case the plaintiff, a sub tenant, was evicted by the superior landlord when the defendant, the mesne lessor, had consented to judgment in a forfeiture action based on breach of covenant against sub-letting. This action was brought by the assignees of the reversion, the assignment having been made a few days after the granting of the underlease, but the defendant's solicitor, not realising that there was no cause of action, told the plaintiff that he would have to go out, and then signed a consent to judgment on behalf of his client. This consent was held to be a positive act constituting a breach of covenant for quiet enjoyment. Vaughan Williams, L.J., said "... I feel that, if all the defendant had done had been to omit to defend the action, there would have been no breach of the covenant ... There may, no doubt, be a breach of the covenant by an act of omission, but it must be the omission of some duty, and there was no duty cast upon the defendant after he had given notice to the plaintiff of the pendency of the action, when the plaintiff might perhaps, if he had so chosen, applied for an order under s. 4 of the Conveyancing Act, 1892."

So much for *dicta*; the principle was acted upon in *Booth v. Thomas* [1926] Ch. 397 (C.A.). A predecessor of the defendant had enclosed a brook in a culvert. Seven years later the plaintiff's predecessor took a lease of a building on another part of the land. Close on fifty years after that the culvert, having worn thin, burst; and the brook overflowed retained and demised premises, causing the collapse of the latter. Pollock, M.R., held that acts of omission stood in the same position as acts of commission. Warrington, L.J., while pointing out the positive aspect of confining waters in an artificial structure incapable of retaining them, held that the collapse was the natural result of the non-repair at any time during forty-seven years. Sargant, L.J., held that the omission to take reasonable steps caused the interruption of the plaintiff's enjoyment.

Thus, first we had the possibility of breach by omission recognised; then it was pointed out that it must be the omission of "some" duty, and lastly, an actual example. But there is little reasoning to show the nature and limits of the duty. All one can say about that is that one will have to look to the existing law on positive breaches when considering whether an omission is an omission of the right kind of duty.

Thus, as it has repeatedly been held that the covenant does not avail a tenant when possession or enjoyment are disturbed by someone against whom he has a remedy himself. This consideration may have been present in the mind of Vaughan Williams, L.J., when, in *Cohen v. Tannar*, *supra*,

he pointed out that the plaintiff could have been let in to defend the earlier proceeding.

But when it comes to neglect of retained adjoining property, the nature and limits of the obligation are not at present easy to ascertain. I would suggest that the "duty" to do something to ensure continuance of enjoyment is one that springs from the control of something capable of injuring someone who has accepted a grant for consideration. The duty would be rather higher than that expounded by Abbott, J.'s, "I have the control and management of all that belongs to my land or my house, and it is my fault if I do not so exercise my authority so as to prevent injury to another," which was the foundation of the rule laid down in *Wilchick v. Marks* [1934] 2 K.B. 56, when a landlord with a right to repair was held liable to a stranger. This was held, in *Wringe v. Cohen* [1940] 1 K.B. 229 (C.A.), not to extend to latent defects; but *Booth v. Thomas* negatives the suggestion that a similar qualification should be imposed when the plaintiff is the defendant's tenant. And it is pertinent to observe that when the covenant for quiet enjoyment is expressed, the wording is usually absolute as regards the assurance "that he [the lessee] shall peaceably hold and enjoy," etc.

Our County Court Letter.

Lease of Grass Keep.

IN *Bolton & Co. v. Edwards*, recently heard at Bridgnorth County Court, the claim was for £50 as the balance due in respect of grass keep and £5 5s. for damage to fences. The counter-claim was for £289 12s. as damages for negligence. The plaintiff's case was that he had leased the grass keep at Ashfield to the defendant from the 28th September, 1939, to the 25th March, 1940, for £100. Half this amount was paid at the commencement of the term and the balance was due at its expiration. The only condition was that the plaintiff should count the animals each day and report if any were missing. There was no agreement that the plaintiff should feed the animals and they were only to use the farm buildings in case of sickness. A filly, which had died, was in poor condition when it arrived and the plaintiff was under no obligation to attend to it. The defendant's case was that the plaintiff had undertaken to look after the stock, but his omission to do so had resulted in the death of a filly worth £250. The animal was found dead in a ditch at the end of January and the cause of death was starvation. The defendant had twenty-six thoroughbreds wintering out, and there was nothing imprudent in allowing a valuable filly to remain out to grass in the severe weather. His Honour Judge Samuel, K.C., held that the agreement did not include an undertaking by the plaintiff to look after the animals to the extent suggested by the defendant. The plaintiff was also not under any obligation to feed the animals. Judgment was given for the plaintiff on the claim for £50 and also on the counter-claim, with costs. The item in the claim for damage to fences was disallowed.

Damage by Boys from Institution.

IN two recent cases at Worcester County Court (*Nott v. McSwiney*; *Collins v. The Same*) the claims were for £25 and £5 respectively for damage to motor cars. These had been left in fields on farms near Besford Court School. On the 12th September, 1939, three boys from the school were seen near the cars, which had been found damaged. Corroborative evidence was given by other farmers of damage caused by boys from the school walking through crops, poaching rabbits and picking mushrooms. The plaintiff's case was that better supervision should have been exercised, and the laxity of discipline rendered the defendant (as administrator of the school) liable for negligence, or under the principle of *Rylands v. Fletcher*. The defence was a denial of liability on either of these grounds. The school was for educable feeble-minded youths, and was largely under the control of the Board of Education and Board of Control. Corporal punishment was forbidden, but there were frequent checks and roll-calls to prevent absconding. The absence of three boys was discovered at 1.45 p.m. on the 11th September, but there was no reason to suppose that they would do malicious damage to property. There were 250 boys at the school, and they all wore uniform. His Honour Judge Roope Reeve, K.C., held that there was no evidence of negligence by the defendant in the mere fact that the boys had done damage. The case was also not governed by *Rylands v. Fletcher*, as the boys were not in the same category as lions and tigers, nor could it be said that they were like domestic animals with a vicious propensity of which the defendant had knowledge. Judgment was given for the defendant, with costs.

Petrol Supplies to Garage.

IN *Anglo-American Oil Co., Ltd. v. Richards*, recently heard at Plymouth County Court, the claim was for £155 17s. 7d. for petrol supplied in June and July, 1938, to the Central Garage, Port Isaac. The plaintiffs' case was that the business was carried on by Foster & Richards, Ltd. The defendant was the secretary and managing director of this company, and he was also the owner of the premises, which he had let to the company. The latter had since gone into liquidation. On acquiring the business, the defendant had notified the plaintiffs that he had invested £1,000 in the venture, and he asked for credit. The plaintiffs had accordingly addressed their letter to the defendant personally, and his replies were signed "R. Richards." The petrol was similarly consigned to the defendant, and not to the limited company. The plaintiffs had two separate accounts for the defendant and the company. The defendant's case was that he had never traded on his own account at Port Isaac. He had merely acted as manager for the company at that address, and his own business was the Notter Motor Garage at Landrake. A mechanic gave evidence that he had been employed by the limited company at Port Isaac, and had ordered petrol in the name of his employers. The plaintiffs' drivers had always been asked by him to make the invoices out to the limited company, and not to R. Richards. His Honour Judge Lias gave judgment for the defendant, with costs.

Liability for Removal of Furniture.

IN *White's Removals and Transport, Ltd. v. Parker*, recently heard at Birmingham County Court, the claim was for £28 as the cost of removal and storage of certain furniture. The latter was the property of a householder, against whom the defendant had obtained judgment for £37. Instead of levying execution upon the furniture of his judgment debtor, the defendant had obtained an order in the Chancery Division for the sale of her house. In order to give vacant possession, the High Sheriff had proposed to place the furniture in the street. For the purpose of preserving the furniture, the defendant intervened and arranged with the High Sheriff that the furniture should be removed by the plaintiffs. The latter made it a condition that the defendant should be responsible for all expenses and liabilities incurred, and their case was that the removal had taken place against the wishes of the householder and on the express instructions of the defendant. This was denied by the defendant, whose case was that the removal took place without objection by the householder, who was the principal debtor. The plaintiffs had been informed that the proceeds of realisation of the house and furniture would cover their costs, and the defendant had merely agreed to indemnify them—if and when they had failed to obtain payment from the householder as owner of the goods. His Honour Judge Dale held that the householder's actions and demeanour indicated that she had not ordered the work to be done, and she was therefore not the principal debtor. The defendant was personally liable for the expenses incurred, and judgment was given for the plaintiffs, with costs.

Practice Notes.

Inherent Power to Adjourn.

IN *Hinckley and South Leicestershire Permanent Benefit Building Society v. Freeman* (1940), 57 T.L.R. 71, Farwell, J., reaffirmed the inherent power of the court to adjourn a case, on proper grounds, for a stated period.

A building society asked for an order of possession of mortgaged land. The society was represented, but the defendant did not appear and was not represented. The Attorney-General appeared to present the other side.

It was admitted that if the court made an order for possession, the mortgagor could show cause, under the Courts (Emergency Powers) Act, 1939, to get the order suspended.

The society had advanced £592, in consideration of which the defendant demised the property to the society for 3,000 years; the defendant's husband was surety. If, for thirteen weeks, she failed to pay 15s. 8d., the weekly subscription, the society could take possession; in that event, there would be a tenancy at will at a peppercorn rent, determinable at any time without notice. In February, the defendant owed £51. In April, the matter came before the master, who adjourned the summons for three months, with liberty to restore before that date if the defendant made default in current weekly payments; no order was made with regard to arrears. The society argued that the proper course was for the court to make the order for possession; there was no jurisdiction to adjourn; the defendant should be left to

invoke the Courts (Emergency Powers) Act, 1939. The Attorney-General maintained that adjournment was "a matter of procedure well within the discretion of the court." And so Farwell, J., held.

It was argued that before the Judicature Act, 1873, a mortgagee could, at common law, in certain events, obtain possession of the mortgaged property. In equity, he could bring foreclosure proceedings; but in that case accounts must first be taken, whereas, at common law, an order for possession could be obtained and enforced by ejectment order—proceedings with which the Court of Equity would not interfere by injunction. After 1875 the mortgagee could pursue any available remedy either in the Court of Equity or in the Courts of Law, save that foreclosure and injunction were specially assigned to the Chancery Division. But he could still go to the King's Bench Division for judgment for possession in a proper case.

In 1936, however, said Farwell, J.—reviewing the history of the remedy of a mortgagee—the rules were changed, and a mortgagee cannot now get an order for possession simply by signing judgment. By Ord. V, r. 5A, every action in which mortgage money or possession of property forming a security is claimed, is assigned to the Chancery Division. By Ord. LV, r. 5A, any mortgagee or mortgagor, or person having a legal or equitable charge on property, or person having the right to foreclose or redeem a mortgage, may take out as of course an *originating summons*, returnable in the chambers of a Chancery judge, for such relief as is specified in the summons, e.g., payment, sale, foreclosure, *delivery of possession*, redemption, reconveyance. Thus, at present, a mortgagee can, by originating summons, seek an order for possession, but he cannot simply sign judgment for possession. The Chancery Master will see either that the defendant appears or whether the plaintiff is entitled to his order, upon which event he will be given an order for possession.

Moreover, a *direction* was since given by the judges of the Chancery Division to masters that when possession is sought and the defendant is in arrear under the mortgage or charge, and the master thinks that the defendant should be given an opportunity to pay the arrears, he may adjourn the summons on such terms as he thinks fit, and if the defendant has not appeared he may direct the plaintiff's solicitor to communicate the terms by letter to the defendant (*Annual Practice*, 1940, p. 1143).

In the present case the defendant appeared and was represented before the master by her husband. The society argued before Farwell, J., that the master had no power to make the order he did; that the *direction* given by the judges was one which they had no power to give; and that a refusal of an order for possession would be a refusal of justice to the plaintiffs.

But Farwell, J., scathingly, but properly (if we may say so), observed:—

"It is a novel proposition to me that this court has no power to adjourn any matter on any proper ground. No doubt the court cannot postpone the hearing of a matter indefinitely, because, if a court did so, that might thereby lead to defeating justice altogether. And a mere arbitrary refusal to hear a particular case is not a practice which would ever become recognised. . . . But to say that the court has not always an inherent power to direct that any matter which comes before it should stand over for a period, if the court thinks that that is the proper way to deal with it, is to me an entirely novel proposition" (at p. 72 of 57 T.L.R.).

What power, moreover, can compel a court to adjudicate upon a matter until the period of adjournment has expired? The Court of Appeal may, of course, remit the matter to the judge, or to some other judge, and order it to be dealt with at once. There is no other method of compulsion beyond taking steps to have a judge removed from office on the ground of "misconduct." A court can say:—

"I shall adjourn the matter, for reasons which appear to me to be sufficient, for a definite period."

There was nothing *ultra vires* or improper either in the master's order or in the judge's direction. That *direction* is not peremptory, but gives the master a discretion which, on the facts of the case before him, he may or may not exercise. If the master is wrong the litigant can go to a judge and thence to the Court of Appeal.

In the present case the master had made a proper order. The three months had expired and none of the instalments had been paid. Farwell, J., accordingly referred the matter back to chambers with a direction to the master, if he was satisfied that no payments had been made during the last three months, to make an order for possession. The defendant would, of course, be entitled to apply for relief under the Courts (Emergency Powers) Act, 1939.

To-day and Yesterday.

Legal Calendar.

11 November.—On the 11th November, 1667, Pepys wrote: "Sir G. Carteret and I towards the Temple in coach together and there he did tell me how the King do all he can in the world to overthrow my Lord Chancellor. . . . And he told me that when first my Lord Gerard, a great while ago, came to the King and told him that the Chancellor did say openly that the King was a lazy person and not fit to govern, which is now made one of the things in people's mouths against the Chancellor. 'Why,' says the King, 'that is no news, for he hath told me so twenty times and but the other day he told me so' and made matter of mirth at it."

12 November.—On the following day, the 12th November, Pepys wrote: "This morning also to my astonishment I hear that yesterday my Lord Chancellor, to another of his Articles, that of betraying the King's councils to his enemies, is voted to have matter against him for an impeachment of High Treason and that this day the impeachment is to be carried up to the House of Lords; which is very high and I am troubled at it for God knows what will follow since they that do this must do more to secure themselves against any that will revenge this, if it ever come in their power." Before Christmas Lord Clarendon had fled the country and was banished.

13 November.—On the 13th November, 1724, Sir James Thornhill, R.A., did a portrait of Jack Sheppard in the condemned hold at Newgate.

14 November.—On the 14th November, 1615, Mrs. Turner was hanged at Tyburn for complicity in the murder of Sir Thomas Overbury. Coke, C.J., had ordered that she should suffer "in her yellow tinny ruff and cuff" for she had invented yellow starch. When she appeared at the gallows "her face was highly rouged and she wore a cobweb lawn ruff yellow starched." The hangman, who wore yellow bands and cuffs, tied her hands with a black silk ribbon which she had provided herself, matching the black veil she wore over her face. She died quickly and that was the end of the fashion for yellow starch.

15 November.—On the 15th November, 1603, William Watson, a secular priest, was tried at Winchester Castle for high treason. He was condemned and executed. Disappointed in his efforts to obtain from the new king, James I, a measure of toleration for Roman Catholics, he had hatched a wild plot to seize his person and force him to yield. The Tower of London was to be occupied and Watson destined for himself the post of Lord Chancellor or Lord Keeper. The overwhelming body of Catholics, however, discouraged from participation by the Jesuit Fathers and expressly forbidden "all unquietness" by the Pope, would have nothing to do with the scheme which was an utter fiasco.

16 November.—When Henry Whalley died at Leominster after a solitary and shabby old age he left over £50,000. Shortly before the end and when he was already ill he had told a young railway clerk working at Hereford, who was his child by a woman with whom he had lived, that he meant to leave him most of his property. However, when the old man had passed away, a will was produced bequeathing the bulk of the estate to a railway porter with whom he lodged and £5,000 only to his son. The document was signed and dated by the deceased, but not written by him. An action in the Probate Division in which the next of kin turned up to take a leading part was settled, but later the astuteness of a solicitor's clerk, who worked on the dissatisfaction of the witnesses to the document with the reward they had received, revealed it to be a forgery. Underneath the text of the will a pencilled letter which had been written for the sick Whalley to sign and then erased began in process of time to be legible again. The porter and one of his witnesses were tried on the 16th November, 1883. They were sentenced to fifteen years' penal servitude.

17 November.—On the 17th November, 1550, it was ordered in Gray's Inn "that henceforth there should be no comedies called Interludes in this House out of Term time, but when the Feast of the Nativity of Our Lord is solemnly observed and that when there shall be any such comedies then all the Society at that time in commons to bear the charge of the apparel."

THE WEEK'S PERSONALITY.

When Sir James Thornhill portrayed Jack Sheppard the incident was commemorated as follows:—

"Sheppard is now secured at last
Thornhill has fixed the felon fast.
Oft though he loosed himself before,
The slippery rogue escapes no more,

Thornhill, 'tis thine to gild with fame
The obscure, and raise the humble name;
To make the form clude the grave
And Sheppard from oblivion save.
Tho' life in vain the wretch implores
An exile on the furthest shores,
Thy pencil brings a kind reprieve,
And bids the dying robber live.
This piece to latest time shall stand,
And show the wonders of thy hand;
Thus former Masters graved their name
And gave egregious robbers fame.
Apelles, Alexander drew;
Cæsar is to Aurelius due;
Cromwell in Lely's work does shine
And Sheppard, Thornhill, lives in thine.
Thou that to churches dost impart,
And hospitals, thy matchless art,
Let prisons, too, thy bounty share,
And Newgate boast thy Sheppard there."

THE LAFFARGE MYSTERY.

Recently *The Times* reprinted an interesting extract from its news of a century ago relating to an inquiry into a breach of discipline by a French National Guardsman who attributed his conduct to the trial of Madame Laffarge for the murder of her husband. While on duty he had insulted a corporal who had had the temerity to assert that the lady was guilty. But the President said: "Another time when you are mounting guard have the goodness to occupy yourself a little less with the criminal business of the country." The excitable sentry was not the only man to lose his head over the case in 1840. It was the sensation of the year and one of the most enthralling mysteries in legal history. Marie Capelle was an attractive young woman with a small fortune. The man with whom she was in love was inconsiderate enough to let another girl temporarily steal his affections. In pique she married the recently widowed owner of an iron works, apparently in such an unsophisticated state of mind that she imagined that "a kiss on my forehead would have contented you and you would have been to me as a father." When she went to live with him in a gloomy, ruinous rat-infested country house called "Le Glandier" she found she was mistaken. Meanwhile, her former lover having repented, she found herself in a difficult situation. In these circumstances Laffarge was suddenly taken ill and died. The question arose: How?

WHAT HAPPENED?

One of the mysteries surrounding the case was this: Laffarge whose business was in a very bad way went to Paris with his manager Barbier to raise money. Marie decided to send him a parcel of little cakes. What he actually got was one large cake, and immediately after eating some he fell sick. He came home and died there and Marie was charged with poisoning his food with arsenic bought for the rats. She was accordingly tried at Tulle. Just outside the court house the experts set up alchemies to analyse parts of the exhumed corpse. A huge brazier completed a macabre scene and the thick foetid vapour given forth nearly interrupted the trial. At first no trace of arsenic was found, but on a further examination by four of the most eminent chemists in France, it was announced that there was arsenic in every part of the body. Barbier was one of the prosecution's star witnesses, but in cross-examination he was shown in such a sinister light that he disappeared next morning. The speech of counsel for the defence was so effective that Marie addressed a note of thanks to "my noble saviour." Nevertheless, she was convicted and sentenced to life imprisonment. After a long campaign to clear her, Napoleon III in 1852 ordered the case to be reopened and she was set free. She died a few months later.

Judgments of the King's Bench Division going back to the time of William III were quoted at Chatham Police Court recently by Mr. Gerald Thesiger to show that property found in the possession of a German airman did not become the property of the Crown but of the person capturing the enemy. Mr. Thesiger was defending a Home Guard who was charged with stealing a German pistol, a clip of ammunition and a German flying helmet. Mr. Thesiger quoted judgments of William III and of 1748 on the question of "prize." Mr. Justice Wright held in 1748, he said, that the subject was entitled to whatever he could take from the King's enemies. In his volume of comments, published in 1794, Mr. Justice Blackstone held that any person might seize to his own use property of the enemy, such person not being entitled to the benefit and protection of the law. He submitted that in the case of the accused the property was never, in fact, in the possession of the Crown, and, therefore, could not be stolen from the Crown. The magistrates dismissed the case.

Notes of Cases.

HOUSE OF LORDS.

Canadian Transport Co., Ltd. v. Court Line, Ltd.

Viscount Maugham, Lord Atkin, Lord Wright, Lord Romer and Lord Porter. 30th May, 1940.

Shipping—Charterparty—Charterers to load cargo under captain's supervision—Owners to give charterers benefit of club insurance "as far as club rules allow"—Negligent stowing—Damage to cargo—Bill of lading holder indemnified—Shipowners' claim against charterers.

Appeal from a decision of the Court of Appeal (83 Sol. J. 475; 55 T.L.R. 756) reversing a decision of Lewis, J., who affirmed an award of an arbitrator in favour of the defendant charterers.

By cl. 8 of a time charterparty, dated the 28th January, 1937: "The captain . . . shall be under the . . . direction of the charterers as regards employment or agency, and charterers are to load stow and trim the cargo at their expense under the supervision of the captain who is to sign bills of lading for cargo as presented, . . . Owners to give time charterers the benefit of their protection and indemnity club insurances as far as club rules allow . . ." The rules of the club, of which the shipowners were members, provided, by r. 2 (i), that the club should be entitled to recover for its own account from third parties any damages that might be provable by reason of neglect; and by r. 17 that no assignment or subrogation by a member of his cover to charterers or any other person should be deemed to bind the club to any extent whatsoever. Owing to negligent stowing, a cargo of grain was damaged to the extent of £101. A claim for damages by the holders of the bill of lading was paid in full by the club. On a claim for indemnity made in the name of the owners against the charterers, the charterers denied liability, claiming to be entitled under the charterparty to the benefit of the owners' club insurance. The charterers also contended that, by reason of the clause in the charterparty providing for stowing under the supervision of the captain, they were not liable for improper stowage in any event. The Court of Appeal held unanimously that, on the construction of the charterparty, the charterers were liable for the improper stowage; and (Goddard, L.J., dissenting) that by reason of r. 2 (i) read in conjunction with r. 17 of the club rules, the charterers could not claim the benefit of the shipowners' club insurance; and that the owners were, accordingly, entitled to recover the full amount of the damages from the charterers. The charterers appealed. (*Cur. adv. vult.*)

LORD ATKIN (with whose judgment Viscount Maugham agreed) said that it was argued that the words "under the supervision of the captain" threw the actual responsibility for stowage on to the captain; or, at any rate, threw on to the shipowners the burden of showing that the damage was not due to an omission by the master to exercise due supervision. That was said to be the point of commercial importance on which the opinion of the House was desired. That defence was without foundation. Supervision of stowage by the captain was in any case a matter of course. He had in any event to protect his ship from being made unseaworthy; and in other respects, no doubt, he had the right to interfere if he considered that the proposed stowage was likely to impose a liability on his owners. The reservation of a right to the captain to supervise, a right which in his (his lordship's) opinion would have existed even if not expressly reserved, had no effect in relieving the charterers of their primary duty to stow safely. That view of the clause was supported by Greer J.'s decision in *Bryns and Gylsen, Ltd. v. J. & J. Drysdale & Co.* (1920), unreported (but see 4 Ll. L. Rep. 24). With regard to the other defence under cl. 8, he, (his lordship) had had much difficulty in appreciating what the clause really meant. It was only applicable so far as the club rules allowed. The true construction must mean damages provable against third parties by reason of their wrongful act or negligence. If that were so, then the rule seemed to be inconsistent with permission to members to give the third party the protection of the insurance in defeasance of that right. As for r. 17, the reference there to "subrogation" was obscure, and apparently unmeaning, but "assignment" appeared to cover what was intended by cl. 8 of the charterparty. Clause 8 certainly seemed to express an assignment by the owners to the charterers of their cover with the club. Rule 17, therefore, also defeated the charterers. The appeal must be dismissed.

The other noble lords concurred.

COUNSEL: *Sir Robert Aske, K.C., and Cyril Miller, for the charterers; Pilcher, K.C., and Boyes, for the shipowners.*

SOLICITORS: *Middleton, Lewis & Clarke; Holman, Fenwick and Willan.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

COURT OF APPEAL.

Wimborne and Cranborne Rural District Council v. East Dorset Assessment Committee.

MacKinnon, Clauson and Luxmoore, L.J.J. 13th June, 1940.

Rating and valuation—"Agricultural land"—Field part of farm usually used for grazing cattle—Occasional user for motor-cycle racing—Payment to occupier—Whether "land used as a racecourse"—Rating and Valuation (Apportionment) Act, 1928 (18 & 19 Geo. 5, c. 44), s. 2 (2).

Appeal from a decision of the Divisional Court, 84 Sol. J. 289; 56 T.L.R. 867, allowing an appeal by case stated from a decision of Dorset Quarter Sessions.

One field of the eleven fields forming the land of a farm at Corfe Mullen, Dorset, was usually used by the farmer in connection with his farming business, but on two afternoons in 1937 and on four afternoons in 1938 he allowed it to be used by a club for motor-cycle racing. The programme of the club described the grass-track on which the racing took place as a "course." A charge of 1s. was made for admission, and there were additional charges for parking in the adjoining field. The club received gate-money amounting to £356 after allowing for tax. The money received was spent on prizes and general expenses. The track was marked out by fencing which the farmer erected with the assistance of the members of the club. He was paid 10s. per 100 spectators, receiving £42 14s. in 1938. The respondent rural district council, having made a proposal for the inclusion of the field as a hereditament in the valuation list in which the farm, being an agricultural hereditament, did not appear, the appellant assessment committee rejected the proposal. The council appealed to quarter sessions, contending that the field was occupied and used as a racecourse, and that it was a separately rateable hereditament. Quarter sessions accepted those contentions and made the necessary consequential order. The Divisional Court reversed that decision, and the council now appealed. By s. 2 (2) of the Act of 1928 "agricultural land" means any land used as arable meadow or pasture ground only . . . but does not include . . . land preserved mainly or exclusively for purposes of sport or recreation, or land used as a racecourse. . . . (*Cur. adv. vult.*)

MACKINNON, L.J., in a written judgment, said that, on the minor question whether the field was a separately rateable hereditament, he was clearly of opinion that it was. The field was presumably bounded by hedges or otherwise defined. If, from the nature of the use made of it, it was not "agricultural land," there was no reason why, merely because it was held by the occupier with other fields which were within the definition, it should not be treated as a separately rateable hereditament. The Lord Chief Justice seemed to have based his view on the ground that the field was only on particular and comparatively rare occasions used as a racecourse. It was, however, to be noted that in the definition the words "mainly or exclusively" used in relation to use for sport or recreation were not repeated in relation to use of land as a racecourse. The consideration of particular and rare occasions of use took account only of the number of occasions in the year when such use was made. That, having regard to the subject-matter, was fallacious. The best racecourses were notoriously only used on a few occasions in a year. The use of a field might be casual and unimportant from a different point of view, for instance, if the farmer occasionally allowed youths with motor-cycles to use it for improvised races. The facts found here showed that the use was far more elaborate than that. It was also not immaterial that the club paid and charged entertainment tax. If the facts found had shown only such casual and unimportant use as a racecourse that the maximum *de minimus* applied, the court should no doubt hold that there was no evidence on which quarter sessions could find that the field was used as a racecourse. If the maxim could not apply, it was impossible to hold that there was no evidence for the conclusion reached by quarter sessions. It was to be doubted whether the Lord Chief Justice's remark that the very occasional use of the field for motor-cycle racing was not such as substantially to affect the use of the field as pasture land in connection with the farm was a material consideration. Presumably, except on the occasion of meetings, a racecourse like that at Ascot could be substantially used as pasture. The policy of the Legislature was, it was to be conceived, that, if a farmer used a field to bring him commercial profit from operations other than agricultural, it was right that he should be rated in respect of that use. The appeal must be allowed.

CLAUSON and LUXMOORE, L.J.J., agreed.

COUNSEL: *S. G. Turner, K.C., and Scott Henderson; Montgomery, K.C., and Squibb.*

SOLICITORS: *Peacock & Goddard, for Luff, Raymond & Williams, Wimborne; Barnes & Butler, for J. W. Miller & Son, Poole.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Gears v. Braley and Others.

Luxmoore and Goddard, L.J.J. 25th June, 1940.

Procedure—Payment in—Death in collision—Administrator's claims—Separate causes of action necessitating separate payments—R.S.C., Ord. 22, r. 1 (1), (2).

Appeal from an order made by Stable, J., in Chambers.

An action was brought by one Gears, as administrator of his deceased wife, under the Law Reform (Miscellaneous Provisions) Act, 1934, for the benefit of her estate, and also under Lord Campbell's Act on his own behalf and on behalf of his infant son, in connection with the death of the wife as the result of a collision between a motor-car driven by the first defendant and a motor-lorry driven by the second defendant as the servant of the third defendants. The defendants admitted liability and wished to pay a sum of money into court without specifying in respect of which cause of action it was paid in. The Master refused the application to take that course, and his decision was upheld by Stable, J. The defendants appealed.

LUXMOORE, L.J., said that it was quite obvious that the two causes of action which arose out of the same incident—namely, the death of the adult plaintiff's wife—were separate. The claim under the Act of 1934 was made by the adult plaintiff as administrator of the estate of his deceased wife, on behalf of those interested in the deceased's estate. The claim under Lord Campbell's Act was made, it was true, by the plaintiff as administrator of the deceased; it was, however, not made on behalf of those interested in the estate, but on behalf of the adult plaintiff himself and of those who came within the category of dependants of the deceased. Therefore, the persons beneficially interested in respect of each cause of action were not necessarily the same persons. Before 1933 it was impossible to make payments into court of one sum of money in respect of a number of causes of action. In each case where there was more than one cause of action and it was decided to make a payment into court, the sum paid in had to be apportioned between the causes of action. After 1933 the material rule was R.S.C., Ord. XXII, r.1 (1) and (2). It was quite plain that the first part of the rule provided that where there were more than one cause of action joined together and a payment into court was made, the payment in must be allocated; but there was this *locus poenitentiae* in sub-r. (2) that a defendant might ask the court to allow him to pay in one sum in respect of the various causes of action. If there were only one person interested in separate causes of action and the damages must go to that one person, it was inconceivable that the court would require the amount paid into court to be allocated. But where there were different classes of persons beneficially entitled to damages, it would be an entirely wrong exercise of the discretion given to the court by sub-r. (2) to allow a lump sum to be paid in.

GODDARD, L.J., agreed.

COUNSEL: *Samuels, K.C.*, and *N. R. Fox-Andrews; Beresford, K.C.*, and *Ryder Richardson*.

SOLICITORS: *Clifford-Turner & Co.; White & Co.; R. I. Lewis & Co.*
[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

APPEALS FROM COUNTY COURTS.

Taylor v. West.

The Master of the Rolls, Clauson and Goddard, L.JJ.
1st November, 1940.

Landlord and tenant—Possession of farm cottage—Required for employee—Certificate of county agricultural committee—Present tenant evacuee—"Reasonably required by the landlord"—Rent and Mortgage Interest Restrictions (Amendment) Act, 1933 (23 & 24 Geo. 5, c. 32), 1st Sched.

Plaintiff's appeal from a judgment for the defendant given by Deputy County Court Judge Seuffert at Chesham County Court in an action for possession of a cottage, No. 2, The Alley, Chalfont St. Giles. The plaintiff, who owned the cottages at No. 1 and No. 2, The Alley, together with the adjoining farm, had a cowman in his employment residing at No. 1, and a labourer, who lived outside Chalfont St. Giles, living with his wife and child in a loft in one of the farm buildings. The respondent had moved from London to No. 2, The Alley, shortly after the outbreak of war, and shortly before the county court hearing had given refuge to relations who had met with a misfortune to their house in London. She had occupied the cottage at No. 2, The Alley, since September, 1939, and the appellant had given her notice to quit on 29th July, 1940. On 29th August, 1940, the appellant had obtained a certificate from the Buckinghamshire Agricultural Committee that the cottage at No. 2, The Alley, was required for the occupation of a farm worker. The 1st Sched. to the Rent and Mortgage Interest Restrictions (Amendment) Act, 1933, gives a court power to make an order or judgment "for the recovery of possession of any dwelling-house to which the principal Acts apply or for the ejectment of a tenant therefrom without proof of alternative accommodation (where the court considers it reasonable so to do) if . . . (g) the dwelling-house is reasonably required by the landlord for occupation as a residence for some person engaged in his whole-time employment . . . or with whom, conditional on housing accommodation being provided, a contract for such employment has been entered into, and either (i) . . . or (ii) the court is satisfied by a certificate of the county agricultural committee . . . that the person for whose occupation the dwelling-house is required by the landlord is, or is to be, employed on work necessary for the proper working of an agricultural holding . . ." The deputy county court judge said that he was not satisfied that the farm could not be worked without the house being occupied by the present employee, and held that, in view of the difficulties in which evacuees from London were placed, it would not be reasonable for him to make an order for possession.

THE MASTER OF THE ROLLS said that the evidence was that without the cottage the farm could not be worked. There was no power to go behind the county agricultural committee's certificate (*Smith v. Primavesi* [1921] W.N. 291.) The question arose whether the court considered it reasonable to make an order for possession. So far as the evidence went, the respondent had the whole of England open to her, and the result of her living in that cottage was that the farm could not be properly worked, a matter of the highest public importance. The deputy county court judge had misdirected himself on the facts and should have exercised his discretion in favour of the plaintiff. The appeal would be allowed and an order for possession would be made in the plaintiff's favour.

CLAUSON and GODDARD, L.JJ., concurred in allowing the appeal.

COUNSEL: *Munro Kerr*.

SOLICITORS: *Stewart-Wallace & Co., Gerrards Cross*.

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

HIGH COURT—CHANCERY DIVISION.

In re Lascelles, ex parte the Trustee v. Black Brothers (Financiers), Ltd.

Farwell and Morton, JJ. 28th October, 1940.

Bankruptcy—Loan by moneylender—Part of capital and interest at rate exceeding 5 per cent. on total loan paid—Debtor bankrupt—Right of moneylender to prove for interest on loan—Bankruptcy Act, 1914 (4 & 5 Geo. 5, c. 59), s. 66 (1), (2) and (3)—Moneylenders Act, 1927 (17 & 18 Geo. 5, c. 21), s. 9.

Appeal from an order made by His Honour Judge J. H. D. Hurst at Coventry County Court.

On the 20th September, 1938, L. gave to the defendants B. Ltd., registered moneylenders, a promissory note in the following terms: "I . . . promise to pay B. Ltd. . . . the sum of £2,000 together with interest thereon at the rate of 45 per cent. per annum by consecutive quarterly instalments of £400 each . . . the first of such instalments to be due and payable on the 10th January, 1939. . . ." On the same day L. gave to the defendant company a charge by way of collateral security on her interests in certain trusts. The sum of £2,000 was duly advanced to L. The first instalment of £400 was paid late on the 9th February, 1939. On the 26th April, before any further instalment was paid, a receiving order was made against L. She died on the 10th May, 1939, and on the 7th June an order was made for the administration of her estate in bankruptcy. A sum of £500 was paid to the defendant company in respect of their security. On the 19th April, 1940, the defendant lodged a proof in respect of their debt. This proof was in the two-fold form usual having regard to s. 66 of the Bankruptcy Act, 1914. It began by showing the amount of the loan as £2,000. It then showed interest from the 20th September, 1938, to the 9th February, 1939, at 45 per cent. per annum amounting to £350 2s. 9d. The payment of £400 made on that date was treated as appropriated as to £340 8s. 6d. to principal and as to £59 11s. 6d. to interest pursuant to s. 66 (2) (b) of the Act of 1914. The sum of £500 was appropriated, as to £394 1s. 10d. to principal and as to £105 18s. 2d. to interest, pursuant to the provisions of s. 66 (2) (c). That left the sum of £1,265 9s. 8d. due for principal and the sum of £340 3s. due for interest, being the balance of interest at 45 per cent. to the date of the receiving order, making a total of £1,605 12s. 8d., and the defendants put in a proof for this sum. The trustee in bankruptcy admitted the proof for £1,605 12s. 8d., but he only allowed the sum of £1,265 9s. 8d. for the purpose of dividend. He postponed the proof for interest on the ground that the defendants had received on account of interest £59 11s. 6d. and £105 18s. 2d., which sums taken together amounted to more than 5 per cent. on the debt. The defendants therefore could not, having regard to s. 66 (1), rank for dividend for anything in respect of interest. The defendants appealed, and the learned county court judge admitted the proof for the sum of £1,605 12s. 8d., but for the purpose of dividend only for the balance of principal, namely, £1,265 9s. 8d., and in addition, interest on such unpaid balance to the date of the receiving order at 5 per cent. The trustee in bankruptcy appealed. The Bankruptcy Act, 1914, s. 66 (1), provides: "Where a debt has been proved, and the debt includes interest, or any pecuniary consideration in lieu of interest, such interest or consideration shall, for the purposes of dividend, be calculated at a rate not exceeding five per centum per annum. . . ." The Moneylenders Act, 1927, s. 9 (1), provides: "Where a debt due to a moneylender in respect of a loan made by him after the commencement of this Act includes interest, that interest shall, for the purposes of the provisions of the Bankruptcy Act, 1914, relating to the presentation of a bankruptcy petition, . . . and dividend, be calculated at a rate not exceeding five per cent. per annum, but nothing in the foregoing provisions shall prejudice the right of the creditor to receive out of the estate, after all the debts proved in the estate have been paid in full, any higher rate of interest to which he may be entitled. The provisions of this subsection shall, in relation to such a debt as aforesaid, have effect in substitution for the provisions of subsection (1) of section sixty-six of the Bankruptcy Act, 1914."

MORTON, J., delivered the judgment of the court, and said the debt in this case comes within the words of s. 9 of the Act of 1927. It seems to us that it cannot be the true construction of the section that, having received interest at a rate exceeding 5 per cent., the defendants should be entitled to receive a dividend in the first instance for any further sum for interest. The original advance was £2,000, taking into account the subsequent payments, which have been properly treated as in part payment on account of principal and in part payment on account of interest, it will be found that the moneylender has received more than 5 per cent. on the money which passed from him to the debtor. In those circumstances, no further sum by way of interest can be allowed to rank for dividend. The appeal must be allowed.

COUNSEL: *R. F. Levy, K.C.*, and *G. F. Kingham*, for the appellant; *V. R. Aronson*, for the respondents.

SOLICITORS: *Woolfe & Woolfe; Alec Woolfe & Turk*.

[Reported by Miss B. A. BUCKNELL, Barrister-at-Law.]

In re Silvester, Silvester v. Public Trustee.

Farwell, J. 31st October, 1940.

Will—Testatrix leaves husband £1 a week—Net estate of £19,000—Husband no means of his own—Application for reasonable maintenance—Inheritance (Family Provision) Act, 1938 (1 & 2 Geo. 6, c. 45), s. 1.

The plaintiff married the testatrix in 1913. At the time of the marriage he had no private means of his own but he was earning his living as manager of licensed premises. At the request of his wife he gave up his work and devoted all his time to her. She paid all the expenses of the home, where they lived on friendly terms for some twenty-six years. She kept no servants, and though she was from time to time ill and in bed for weeks, she refused to have a nurse. The plaintiff did all the work of the house and nursed the testatrix day and night when she needed it. He was never paid any allowance. The testatrix died in February, 1940. By her will, dated the 19th October, 1939, after making certain bequests, she gave all her estate to her trustees upon trust for sale and conversion and to hold her residuary estate upon trust to pay, duty fee, to her brother and sister annuities of £104 each for life, and to pay to the plaintiff an annuity of £52 for his life. After directing a fund to be set aside to answer the annuities, she declared that the annuities should only be paid until the respective annuitants in each case should assign, mortgage, charge or incur the annuity or attempt to do so, and upon such event happening the annuity was to cease. She directed her trustees to pay and divide the residue of her estate between three charities. The net value of the estate of the testatrix was approximately £19,000. She left no issue surviving. The plaintiff had no capital or income of his own. He took out this summons under the Inheritance (Family Provision) Act, 1938, asking that such reasonable provision as the court might think fit might be made out of the net estate of the testatrix for his maintenance.

FARWELL, J., said that he did not think applications by husbands under the Inheritance (Family Provision) Act, 1938, were applications which the court ought readily to entertain. *Prima facie* a husband should be able to maintain himself. He ought not to ask the court to give to him out of his wife's estate more than she thought fit to provide for him. There were exceptional cases in which such an application might be well justified, but personally he would not be very willing to assist a husband unless the circumstances were exceptional. In the present case the circumstances were exceptional. The plaintiff had had his time fully occupied during the years of his married life in running the home and looking after his wife. He was prevented in this way from earning his own living or from making such provision for his old age as he might otherwise have done. At the age of sixty-eight he now found himself with only £1 a week to live upon. His chances of earning his living had been much prejudiced by the circumstances of his married life. He had some reason to feel that his wife had not made proper provision for him. This was a case where the court ought to add to the small annual sum given by the will. He had come to the conclusion that the reasonable provision for the husband would be £4 a week, to include the £1 a week he took under the will. This additional provision would be free of legacy duty and subject to the provision against alienation contained in the will.

COUNSEL : Droop (for L. F. Mumford, on war service); Turnbull ; Baden-Fuller.

SOLICITORS : Webster Butcher & Sons ; F. W. Hughes & Son.

[Reported by Miss B. A. BICKNELL, Barrister-at-Law.]

HIGH COURT—KING'S BENCH DIVISION.**Hesketh v. Nicholson.**

Singleton, J. 18th June, 1940.

Negligence—Solicitor—Client's claim against public authority—Action brought after six months—Failure to warn client of time-limit.

Action for damages for negligence.

On the 19th July, 1937, the plaintiff was struck by a motor-lorry belonging to the Southwark Borough Council, and sustained injuries which the judge found to be due to the negligent driving of the council's servant. On the 20th September, 1937, the plaintiff consulted the defendant, Nicholson, a solicitor. On the 11th October, 1937, Nicholson wrote to the council's insurance company, Municipal Mutual Insurance, Ltd., stating that he was taking up the claim on behalf of the plaintiff. Negotiations ensued which were still pending on the 19th January, 1938. On the 20th, the day on which the six months' limitation period provided by the Public Authorities Protection Act ran out, the defendant wrote to the plaintiff that the insurance company had offered to pay £150. That was not regarded as sufficient, and it was decided that a writ should be issued. It was known to the insurance company when they made their offer that instructions would have to be taken from the plaintiff, so that an answer could not be obtained from him until the six months had expired. The offer of the insurance company was withdrawn and the defendant was instructed to issue a writ against the council. On the 19th April, 1938, the council delivered a defence in which they pleaded the Act. The plaintiff accordingly abandoned that action and now sued the defendant for negligence.

SINGLETON, J., said that it was interesting to note that the benefit of that Act was being claimed, not by persons acting in the execution

of statutory or other public duties, but for the financial benefit of an insurance company covering their risk. The defendant did not think that there would ever be such a plea. He had written to the council and received the reply that as the insurance company's solicitors were dealing with the matter the council could not intervene. It was difficult to think that an insurance company would take such a point at a time when negotiations were going on. The action of the insurance company had meant that a solicitor of repute had been made to face a charge of negligence because he thought that he was dealing with people of whom he might expect equal terms. The course which the matter had taken was greatly to be regretted. If the writ in the action had been issued in time, in all probability the plaintiff would have received £250. The plaintiff was not told by the defendant of the position which would arise unless the writ were issued in time. The law on the matter was clear: It was the duty of a solicitor to bear in mind the provisions of the Public Authorities Protection Act and to inform his client on the subject. The defendant did not remind the plaintiff of what would ensue if the writ were not issued in time. The defendant had therefore failed in his duty as solicitor and legal adviser to the plaintiff to whom must be awarded as damages the £250 above referred to and £30 15s. 5d. in respect of the costs incurred in the action against the borough council.

COUNSEL : Astell Burt ; C. L. Henderson.

SOLICITORS : Evill & Coleman ; B. Hoddinott & Son.

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

Trade Promotion Trust, Ltd. v. Young.

Humphreys, J. 8th August, 1940.

Hire-purchase—Agreement to hire furniture made by dealer with customer—Subsequent advance by finance company of value of furniture to dealer—Not a moneylending transaction.

Action for money had and received by the defendant to the use of the plaintiffs.

The defendant was a house furnisher and the plaintiffs were a hire-purchase finance company. Under an agreement entered into between the parties in May, 1929, the following arrangement was made, as found by Humphreys, J., in his judgment: The plaintiffs were willing to buy furniture and pay the defendant cash for it, provided that he produced a person willing to take the furniture from them on hire-purchase terms, and they required before paying for the furniture that the defendant's customer should have signed a binding hire-purchase agreement in respect of it. The plaintiffs had not to sign any documents, but they undertook to pay to the defendant the agreed value of the furniture when the customer had signed his agreement. In an affidavit the defendant admitted that the agreement of May, 1929, provided that he was to collect instalments from hirers and pay them over to the plaintiffs. A director of the plaintiff company stated in an affidavit that the company were buying goods which they were selling to members of the public on hire-purchase terms, and that the defendant was the company's agent for the purpose of those transactions. He submitted that the defendant was collecting the moneys from the hirers as a trustee for the plaintiff company. In May, 1940, the defendant collected for the plaintiffs sums amounting to £212 17s. 7d., and the plaintiffs, contending that that money had not been paid over to them, brought this action to recover it. The defendant in resisting the claim did not deny that he had collected that sum, but raised various points under the agreement and contended besides that it was unenforceable as being, in effect, a moneylending contract, and the plaintiffs not being registered moneylenders.

HUMPHREYS, J., said that the defendant's contention appeared to be that the agreement of May, 1940, was not really, as it purported to be, a transaction by which the plaintiffs bought furniture from the defendant and then let it to hirers under hire-purchase agreements; but that in fact the company first let the furniture to hirers and then made a payment to the defendant, who was the trader. The true position, however, was that the plaintiffs, who were business men and not philanthropists, were not prepared to buy from the defendant, and pay him for, furniture which they did not require themselves, and then to find that there was no one whom they could compel to take it on hire-purchase terms. They therefore insisted that, before they paid the defendant for any furniture, he should produce documents signed by his customer. He (his lordship) did not consider that that constituted a moneylending transaction. There was no reason why the court should strain the language of the agreement in order to interpret it as a money-lending transaction, when it was obvious from the course of business that it was never regarded as such by either of the parties. The defendant had admittedly collected money which was due to the plaintiffs under the agreement, and he must pay it over. The whole law of the matter was to be found in *Re Watson*, 25 Q.B.D. 27, which justified the statement that if there were any reason for supposing the real transaction to be something other than it purported to be on the face of it, the court would scrutinise the whole of the circumstances. The Court of Appeal there held that, in order to determine whether a document which purported to be a hire-purchase agreement was or was not something quite different, namely, a bill of sale, the court was not bound by the language of the relevant document, but might inquire into the circumstances. He (Humphreys, J.) would add that

the court would not go out of its way to say that the document was not what it purported to be in a case where the parties had each acted under it for years with profit to themselves. The whole essence of the court's power to examine the real nature of a transaction was to enable justice to be done and to prevent a party's being bound by the terms of a document which was never intended to have the particular effect alleged to be binding. That was not the present case.

His lordship having decided that the defendant was entitled to a deduction of 10 per cent., which he claimed, judgment was entered for the plaintiffs for £191 14s. 3d.

COUNSEL: *Roskill; Quass.*

SOLICITORS: *Edward & Childs; Teff & Teff.*

[Reported by R. C. CALBURN, Esq., Barrister-at-Law.]

PROBATE, DIVORCE AND ADMIRALTY DIVISION.

Manser v. Manser (King's Proctor showing cause).

Langton, J. 30th August, 1940.

Divorce—Wife's petition—Reasonable grounds for supposing that other party to marriage is dead—Presumption of death—Husband really alive—King's Proctor's intervention—Material fact—The Matrimonial Causes Act, 1937, s. 8 (1 Edw. 8 and 1 Geo. 6, c. 57) and The Supreme Court of Judicature (Consolidation) Act, 1925, s. 183 (2) (15 & 16 Geo. 5, c. 49).

A wife petitioner obtained a decree *nisi* of divorce under s. 8 (1) of the Matrimonial Causes Act, 1937, on the ground that she had "reasonable grounds" for supposing "that the other party to the marriage was dead," having regard to the fact that for a period of seven years or upwards the other party to the marriage had been continually absent from the petitioner, and the petitioner had no reason to believe that he had been living within that time. The King's Proctor later filed a plea alleging that the divorce was obtained contrary to the justice of the case by reason of a material fact not having been brought to the notice of the court, namely, that the husband was alive. By s. 183 (2) of the Supreme Court of Judicature (Consolidation) Act, 1925, which (*inter alia*) is made applicable to a petition and a decree under s. 8 of the 1937 Act, after the pronouncing of the decree *nisi* and before the decree is made absolute, any person may, in the prescribed manner, show cause why the decree should not be made absolute by reason of the decree having been obtained by collusion or by reason of material facts not being brought before the court, and in any such case the court may make the decree absolute, reverse the decree *nisi*, require further inquiry, or otherwise deal with the case as the court thinks fit. Section 8 (2) of the 1937 Act provides that the fact that for a period of seven years or upwards the other party to the marriage has been continually absent from the petitioner, and the petitioner has no reason to believe that the other party has been living during that time, shall be evidence that he or she is dead until the contrary is proved.

LANGTON, J., said that counsel for the petitioner contended, first, that the fact that the husband was alive was not material, and secondly that in the present context material facts should be construed as *eiusdem generis* with collusion. To deal with the second point first, he should be at a loss to imagine a genus which embraced both collusion, which connoted intention, and material facts, which, in the present case, were innocently withheld, thus excluding intention. The material facts which were constantly brought to the notice of the court in this connection had no relation at all to the subject of collusion. He could not believe this point to be a sound one. With regard to the first point, *Parkinson v. Parkinson* [1939] P. 346 was cited to him, but was not claimed to be addressed to the particular point raised in this case. It was argued by counsel for the petitioner that the words "dead until the contrary is proved" in s. 8 (2) of the 1937 Act must be read together, and therefore the facts in the preceding words of the subsection were to be treated as constituting the evidence necessary for the decree. Read naturally and simply, full value could be given to every word in the section if it were taken to allow the court to act on the facts set out in subs. (1) and (2) respectively by granting a decree *nisi* on proof of either of those sets of facts, but at the same time to preserve in subs. (3) a right to recall the decree if within the prescribed period material facts came to light contradicting the facts or presumptions on which the decree was granted. The decree *nisi* did not dissolve the marriage or make the normal obligations and conditions of marriage disappear (*Fender v. Midmay* [1938] A.C. 1), and it was merely inchoate and provisional. It could be recalled if circumstances which justified its grant are shown before the decree is made absolute to have been presented in error. The fact that the husband was alive was a material fact and the paradox involved by holding the contrary would be preposterous.

COUNSEL: *P. R. Hollins* (for *S. E. Karminski*, on war service); *W. R. K. Merrylees*.

SOLICITORS: *The King's Proctor; Smith, Rundell, Dods & Bockett, for William Wilnot Pearson, Chatham.*

[Reported by MAURICE SHARE, Esq., Barrister-at-Law.]

For the first time in history a woman was nominated for the office of sheriff of the county in which she lives. She is Mrs. C. S. Way, of Garthmyl Hall, Garthmyl, Montgomeryshire.

Books Received.

The Law and Practice of Parliamentary Elections. By JOSEPH BAKER, of Lincoln's Inn and Gray's Inn, Barrister-at-Law. 1940. Royal 8vo. pp. xxiv and (with Index) 654. London: H. A. Just & Co. Price £2 10s. net.

Second Addendum to a Guide to Income Tax Practice. Fourteenth Edition. By ROGER N. CARTER, M.Com., F.C.A., and HERBERT EDWARDS, M.A. August, 1940. pp. vi and 1157-1230 (with Index). London: Gee & Co. (Publishers), Ltd. Price 3s. 6d. net.

Law for Nurses and Nurse-Administrators. By S. R. SPELLER, LL.B., of Lincoln's Inn, Barrister-at-Law. 1940. Demy 8vo. pp. xxvi and (with Index) 206. London: H. K. Lewis & Co. Price 10s. 6d. net.

Loose-leaf War Legislation. Edited by JOHN BURKE, Barrister-at-Law. 1940. Part 12. London: Hamish Hamilton (Law Books), Ltd.

Mews' Digest of English Case Law. By G. T. WHITFIELD-HAYES, Barrister-at-Law. Quarterly Issue, October, 1940. Containing cases reported from 1st January to 1st October, 1940. London: Sweet & Maxwell, Ltd.; Stevens & Sons, Ltd.

Dymond's Death Duties. 1940. Cumulative Supplement to Eighth Edition. By ROBERT DYMOND, recently Deputy Controller of the Estate Duty Office, Somerset House, and Solicitor of the Supreme Court. pp. vii and (with Index) 55. London: The Solicitors' Law Stationery Society, Ltd. Price 6s. net.

Societies.

Solicitors' Benevolent Association.

The monthly meeting of the Directors was held at 60, Carey Street, Chancery Lane, W.C.2, on Wednesday, 6th November. Mr. Henry White, M.A. (Winchester), was in the chair, and the following Directors were present: Mr. G. L. Addison, Mr. Miles Beevor, Mr. Ernest E. Bird, Mr. W. E. M. Blandy, M.A. (Reading), Mr. P. D. Botterell, C.B.E., Mr. R. Bullin, T.D., J.P. (Portsmouth), Mr. W. Sefton Clarke, M.A. (Bristol), Sir Edmund Cook, C.B.E., LL.D., Mr. C. H. Culross, Mr. T. S. Curtis, Mr. F. Stormonth Darling, Mr. A. F. King-Stephens, Mr. R. C. Nesbitt, Mr. Gerald Russell and Mr. A. M. Welsford. Mr. G. L. Addison (London) was elected Chairman, and Mr. R. Bullin, T.D., J.P. (Portsmouth), Vice-Chairman for the ensuing year. Grants amounting to £1,335 5s. were made from the general funds to thirty-five applicants, seven pensions were awarded from the Swann Pension Fund amounting in all to £340, and £30 was granted from the Coward Fund towards the expenses of a member's daughter who had been awarded a scholarship at a University. Four new members were admitted.

Parliamentary News.

PROGRESS OF BILLS.

ROYAL ASSENT.

The following Bills received the Royal Assent on the 6th November:—
Prolongation of Parliament.
Clyde Lighthouses Consolidation Order Confirmation.
Fife County Council Order Confirmation.

HOUSE OF LORDS.

Workmen's Compensation and Benefit (Byssinosis) Bill [H.L.].
Read Second Time. [12th November.

HOUSE OF COMMONS.

Ayr Burgh Order Confirmation Bill [H.C.].
Read First Time. [7th November.

War Legislation.

(Supplementary List, in alphabetical order, to those published week by week in THE SOLICITORS' JOURNAL from the 16th September, 1939, to the 9th November, 1940.)

STATUTORY RULES AND ORDERS, 1940.

- No. 1923. **Air Navigation** (Amendment) (No. 2) Order in Council, October 24.
- E.P. 1927. **Cod Fillets** (Maximum Prices) Order, October 31.
- E.P. 1939. **Control of Paper** (No. 28) Order, November 2.
- E.P. 1942/S.94. **Court of Session, Scotland.** Act of Sederunt, October 22, regulating Procedure under Regulation 18AA (4) of the Defence (General) Regulations, 1939.
- E.P. 1936/S.93. **Cultivation of Lands** (Scotland) (Amendment No. 4) Order, October 28.
- No. 1929. **Export of Goods** (Control) (No. 38) Order, November 4.

- No. 1933. **Fruit Tree Pests** (Cambridgeshire) Order, October 31.
 E.P. 1908. **Juvenile Courts** (Metropolitan Police Court Area) (No. 3) Order, October 28.
 E.P. 1934. **Lighting** (Restrictions) (Amendment) (No. 2) (Northern Ireland) Order, October 29.
 E.P. 1931. **Metropolitan Police Courts** (No. 3) Order, October 19.
 No. 1926. **Naval Reserves**. Order in Council, October 24, 1940, as to payment of Gratuities to certain Reservists.
 E.P. 1928. **Potatoes** (1940 Crop) (Control) Order, 1940. Amendment Order, October 31, 1940.
 E.P. 1935. **Rabbits** (Retail Maximum Prices) Order, November 1.
 No. 1925. **Record Office**, England. Order in Council, October 24, 1940. Approving Additional Rule extending Rules for the Disposal of Valueless Documents to those of the Ministries of Economic Warfare, Food, Information, Shipping and Supply.
 E.P. 1944. **Regulation of Payments** (Hungary) (No. 3) Order, November 5.
 No. 1917. **Safeguarding of Industries** (Exemption) No. 14 Order, October 31. (Ethyl Cellulose; Ethyl cyan-acetate; Ethyl ortho formate).
 No. 1918. **Visiting Forces Order in Council** (No. 4), October 24.
 No. 1919. **Visiting Forces Order in Council** (No. 5), October 24.
 No. 1920. **Visiting Forces Order in Council** (No. 6), October 24.
 No. 1921. **Visiting Forces Order in Council** (No. 7), October 24.
 No. 1922. **Visiting Forces Order in Council** (No. 8), October 24.

Copies of the above S.R. & O.'s, etc., can be obtained through The Solicitors' Law Stationery Society, Ltd., 22, Chancery Lane, London, W.C.2, and Branches.

Legal Notes and News.

Honours and Appointments.

The following promotions and transfers have been announced by the Colonial Legal Service:—

Mr. J. G. MATHISON, Administrator-General, to be Chief Registrar of the Supreme Court, Nigeria; Mr. W. H. STUART, Chief Justice, Tonga, to be Puisne Judge, British Guiana; Mr. I. J. T. TURBETT, formerly Puisne Judge, Gold Coast, to be Puisne Judge, Gold Coast.

Notes.

Dr. Russell Thomas, of London, has been chosen as Liberal National candidate for Southampton in the place of Lord Reith. Dr. Russell Thomas, who is chairman of the London National Liberal Party, has been called to the Bar by Lincoln's Inn. He is also a surgeon and physician.

When the trial of Mrs. Ransom at the Central Criminal Court was adjourned until Monday last, the jury, under a new regulation introduced recently, were, for the first time in the history of the Central Criminal Court, allowed to separate and go to their respective homes instead of being locked up together at a City hotel, as has hitherto been the custom with juries engaged on murder trials. This provision, it is understood, was introduced owing to the air raids.

According to a note in *The Times*, Lord Justice MacKinnon said on Tuesday last that he received communications from eminent people on half-sheets of paper, and in used envelopes—with the address on a pasted slip. And yet, he added, three copies of the correspondence and a good deal of the evidence—the latter quite unnecessary as there was no appeal against the amount of damages awarded—had been provided for the Bench in the case before the court. Lord Justice Scott said that he had called attention to the same matter on a previous occasion, and he hoped that it would be borne in mind in the future.

The annual ceremony of the nomination of the sheriffs for England and Wales, except the Duchies of Lancaster and Cornwall, took place at the Law Courts on Tuesday last. Sir Kingsley Wood, Chancellor of the Exchequer, presided. Accompanying him on the Bench were the Lord Chief Justice (Lord Caldecote), Lord Clarendon (Lord Chamberlain), Mr. Justice Singleton and Mr. Justice Hallett.

At a meeting of the British Records Association in London on Tuesday last, Miss Joan Wake declared that under the waste-paper salvage scheme we were destroying historical records with more than Teutonic thoroughness. "If English history does not matter, all this destruction does not matter in the least," she said, "and the sooner we boil down Domesday Book to make glue for aeroplanes and use the famous 'scrap of paper' to make wads for cartridges the better. It would make at least a dozen very good wads. In some ways it would be better to use Domesday Book rather than the records being turned out of solicitors' offices, because it has been reproduced thousands of times." The council was asked to take all steps possible to prevent the destruction of records.

Wills and Bequests.

Mr. John James Cockshott, O.B.E., solicitor, of Southport, "so far as can at present be ascertained," left £26,227, with net personalty £17,195.

Court Papers.

SUPREME COURT OF JUDICATURE.

MICHAELMAS SITTINGS, 1940.

DATE.	ROTA OF REGISTRARS IN ATTENDANCE ON		MR. JUSTICE FARWELL.	
	EMERGENCY ROTA.	APPEAL COURT NO. 1.	MR. JUSTICE BENNETT.	MR. JUSTICE SIMONDS.
Nov. 18	Mr. Jones	Mr. Blaker	Mr. Jones	Mr. Blaker
" 19	Ritchie	Andrews	Mr. Jones	Mr. Blaker
" 20	More	Jones	Mr. Jones	Mr. Blaker
" 21	Blaker	Ritchie	Mr. Jones	Mr. Blaker
" 22	Andrews	More	Mr. Jones	Mr. Blaker
" 23	Jones	Blaker	Mr. Jones	Mr. Blaker

GROUP A.		GROUP B.	
DATE.	Witness.	DATE.	Witness.
Nov. 18	More	Nov. 18	More
" 19	Blaker	" 19	Blaker
" 20	Andrews	" 20	Andrews
" 21	Jones	" 21	Jones
" 22	Ritchie	" 22	Ritchie
" 23	More	" 23	More

Stock Exchange Prices of certain Trustee Securities.

Bank Rate (26th October, 1939) 2%. Next London Stock Exchange Settlement, Thursday, 21st November, 1940.

	Div. Months.	Middle Price 15 Nov. 1940.	Flat Interest Yield.	† Approximate Yield with redemption.
ENGLISH GOVERNMENT SECURITIES.				
Consols 4% 1957 or after	FA	111	3 12 1	3 2 3
Consols 2½%	JAJO	76	3 5 9	—
War Loan 3% 1955-59	AO	101	2 19 5	2 18 2
War Loan 3½% 1952 or after	JD	101½	3 9 0	3 7 0
Funding 4% Loan 1960-90	MN	112½	3 11 3	3 2 8
Funding 3% Loan 1959-69	AO	98½	3 9 11	3 1 7
Funding 2½% Loan 1952-57	JD	98½	2 10 1	2 18 0
Funding 4% Loan 1954-61	AO	92	2 14 4	3 0 9
Victory 4% Loan Average life 21 years	MS	111	3 12 1	3 5 4
Conversion 5% Loan 1944-64	MN	107½	4 12 10	2 12 1
Conversion 3½% Loan 1961 or after	AO	102	3 8 8	3 7 2
Conversion 3% Loan 1948-53	MS	102½	2 18 6	2 12 1
Conversion 2½% Loan 1944-49	AO	99½	2 10 3	2 11 5
National Defence Loan 3% 1954-58	JJ	102	2 18 10	2 16 7
Local Loans 3% Stock 1912 or after	JAJO	88	3 8 2	—
Bank Stock	AO	331	3 12 6	—
Guaranteed 3% Stock (Irish Land Acts) 1939 or after	JJ	89	3 7 5	—
India 4½% 1950-55	MN	107½	4 3 9	3 11 1
India 3½% 1931 or after	JAJO	93	3 15 3	—
India 3% 1948 or after	JAJO	80½	3 14 6	—
Sudan 4½% 1939-73 Average life 27 years	FA	110	4 1 10	3 18 0
Sudan 4% 1974 Red. in part after 1950	MN	106	3 15 6	3 5 9
Tanganyika 4% Guaranteed 1951-71	FA	109	3 13 5	2 19 0
Lon. Elec. T. F. Corps. 2½% 1950-55	FA	93	2 13 9	3 1 9
COLONIAL SECURITIES.				
*Australia (Commonwealth) 4% 1955-70	JJ	105	3 16 2	3 11 4
Australia (Commonwealth) 3½% 1964-74	JJ	92	3 10 8	3 13 3
Australia (Commonwealth) 3% 1955-58	AO	90	3 6 8	3 15 6
*Canada 4% 1953-58	MS	111	3 12 1	2 19 3
New South Wales 3½% 1930-50	JJ	98	3 11 5	3 15 2
New Zealand 3% 1945	AO	95	3 3 2	4 5 1
Nigeria 4% 1963	AO	105	3 16 2	3 13 6
Queensland 3½% 1950-70	JJ	96	3 12 11	3 14 7
*South Africa 3½% 1953-73	JD	101½	3 9 0	3 7 0
Victoria 3½% 1929-49	AO	98	3 11 5	3 15 4
CORPORATION STOCKS.				
Birmingham 3% 1947 or after	JJ	79½	3 15 6	—
Croydon 3% 1940-60	AO	92½	3 4 10	3 11 1
Leeds 3½% 1958-62	JJ	94	3 9 2	3 13 1
Liverpool 3½% Redeemable by agreement with holders or by purchase	JAJO	93	3 15 3	—
London County 3% Consolidated Stock after 1920 at option of Corporation	MJSD	82	3 13 2	—
London County 3½% 1954-59	FA	103	3 8 0	3 4 7
Manchester 3% 1941 or after	FA	81	3 13 7	—
Manchester 3% 1958-63	AO	93½	3 4 2	3 8 1
Metropolitan Consolidated 2½% 1920-49	MJSD	98	2 11 0	2 14 11
Met. Water Board 3% "A" 1963-2003	AO	82½	3 12 9	3 14 5
Do. do. 3% "B" 1934-2003	MS	86½	3 9 4	3 10 8
Do. do. 3% "E" 1953-73	JJ	90	3 6 8	3 10 3
Middlesex County Council 3% 1961-66	MS	91½	3 5 7	3 10 3
*Middlesex County Council 4½% 1950-70	MN	105	4 5 9	3 16 8
Nottingham 3% Irredeemable	MN	79½	3 15 6	—
Sheffield Corporation 3½% 1968	JJ	97½	3 11 10	3 12 11
ENGLISH RAILWAY DEBENTURE AND PREFERENCE STOCKS.				
Great Western Rly. 4% Debenture	JJ	107	3 14 9	—
Great Western Rly. 4½% Debenture	JJ	112½	4 0 0	—
Great Western Rly. 5% Debenture	JJ	117½	4 5 1	—
Great Western Rly. 5% Rent Charge	FA	113½	4 8 1	—
Great Western Rly. 5% Cons. Guaranteed	MA	109½	4 11 4	—
Great Western Rly. 5% Preference	MA	81	6 3 5	—

* Not available to Trustees over par.

† In the case of Stocks at a premium, the yield with redemption has been calculated at the earliest date; in the case of other Stocks, as at the latest date.

